

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

BOYD MCGATHEY, ET AL.

**v.
MATTHEW K. DAVIS TRUST**

RESPONDENTS,

APPELLANT.

DOCKET NUMBER WD77437

DATE: February 3, 2015

Appeal From:

Jackson County Circuit Court
The Honorable Edith Messina, Judge

Appellate Judges:

Division Three: Karen King Mitchell, Presiding Judge, Cynthia L. Martin, Judge and Gary D. Witt, Judge

Attorneys:

Martin M. Meyers and Leonard A. Stephens, Kansas City, MO, for respondents.

Daniel P. Wheeler and Scott K. Martinsen, Overland Park, KS, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

BOYD MCGATHEY, ET AL.,

RESPONDENTS,

v.

MATTHEW K. DAVIS TRUST,

APPELLANT.

No. WD77437

Jackson County

Before Division Three: Karen King Mitchell, Presiding Judge, Cynthia L. Martin, Judge and Gary D. Witt, Judge

This is an appeal from a judgment entered in a garnishment proceeding that ordered garnishees Roger Hoyt and Country Club Trust Company, N.A., in their capacity as the trustees of the Matthew K. Davis Trust, to pay \$105,000 into the Court following the determination of exceptions to garnishment interrogatory answers filed by garnishors Boyd McGathey and Debra Augustine. Hoyt and Country Club Trust Company, N.A., argue that the trial court erred in denying their motion for summary judgment addressing Garnishors' exceptions.

Appeal Dismissed.

Division Three holds:

An order directing a garnishee to pay in money to the Court is ordinarily an interlocutory order from which no appeal can be taken. A pay in order does become final and appealable, however, if the garnishee posts a bond in lieu of abiding by the pay in order. Garnishees Hoyt and Country Club Trust Company, N.A., posted a bond instead of abiding by the trial court's pay in order. But rather than appeal from the pay in order, Garnishees only point relied on asserts that the trial court erred in denying their motion for summary judgment. The trial court's judgment ordering Garnishees to pay \$105,000 into the Court cannot be construed as a grant of a cross-motion for summary judgment in favor of Garnishors McGathey and Augustine that would allow appellate review of Garnishee's appeal. The judgment does not reference a cross-motion for summary judgment, does not grant summary judgment for Garnishors because a cross-motion for summary judgment was never filed, and is based on arguments not made in Garnishees' summary judgment motion. We will not construe the judgment as a grant of an unfiled cross-motion for summary judgment. Because Garnishees point relied on leaves nothing for appellate review, we must dismiss their appeal.

Opinion by Cynthia L. Martin, Judge

February 3, 2015

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